Chapter Comm 47

PETROLEUM ENVIRONMENTAL CLEANUP FUND

Note: Chapter ILHR 47 was created as an emergency rule effective January 1, 1993. Chapter ILHR 47 was renumbered Chapter Comm 47 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 7., Stats., Register, December, 1998, No. 516.

Subchapter I — Purpose, Authority and Application

Comm 47.01 Purpose. (1) PECFA FUND. The purpose of this chapter is to provide information on the Petroleum Environmental Cleanup Fund program, also referred to as the Petroleum Storage Environmental Remedial Action Fund and the Petroleum Storage Remediation Fund; outline the processes and procedures for filing a claim for an eligible remediation and specify the process of determining award amounts.

(2) STATUTORY AUTHORITY. This chapter is adopted pursuant to ss. 101.143 and 101.144, Stats., as created by 1987 Wis. Act 399 and subsequent acts through 1997 Wis. Act 27.

(3) INTENT OF PECFA. (a) The PECFA fund does not relieve a responsible party from liability. The individual or organization responsible for a contaminated property shall carry out the remediation of that property. PECFA's role is to provide monetary awards to responsible parties who have completed and paid for PECFA−approved remediation activities and services. The availability or unavailability of PECFA funding shall not be the determining factor as to whether a remediation shall be completed.

(b) The responsible party shall be the primary point for the control of costs within the PECFA program. The focus of the program will be to maintain the responsible party as the central control point throughout the claim process.

(4) CONTROL OF COSTS. The framework for the control of costs within the PECFA program shall be based upon the responsible party minimizing costs in all phases of the remediation. The primary structural factors for the control of costs include the following:

(a) The selection of a consulting firm through a comparison of at least 3 proposals. Once selected, the firm may only provide professional consulting services on the remediation;

(b) The requirement to purchase or contract for commodity services through the use of competitive bids;

(c) The consideration of the costs and benefits of remediation alternatives;

(d) The use of environmental factors to determine the eligible range of responses on a site;

(e) The use of site bundling and competitive bidding to reduce costs;

(f) The registration for participation in the PECFA program, only those consultants and consulting firms which meet specific qualifying criteria and standards of conduct; and

(g) The publication of cost guidelines for cost−effective remediations.

(5) MOST COST−EFFECTIVE REMEDIATION ALTERNATIVE. The PECFA fund shall ensure that awards are made for only the most cost−effective remediation alternative. The department may allow a higher cost alternative provided:

(a) The responsible party assures personal payment of the difference in cost between the lowest cost remediation and the higher cost alternative desired; or

(b) The department determines that the objectives of the PECFA program would be furthered by the use of a specific remedial technology.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; am. (2), (3) (a), (4) (c) and (5), renum. (4) (d) and (e) to be (4) (f) and (g), cr. (4) (d) and (e), Register, December, 1998, No. 516, eff. 1−1−99.

Comm 47.015 Definitions. In this chapter:

(1) "Active treatment" means a remedial activity that is not natural attenuation or monitoring but is conducted in situ. Active treatment includes use of biological or chemical agents to augment remediation of contamination.

(2) "Agent" means a person or organization designated by an owner, operator or person owning a home oil tank system to act on behalf of the owner or operator or person owning the home oil tank system in conducting the remedial activities.

(3) "Annual aggregate" means the total amount of awards that an owner or operator may obtain during a program year under this chapter.

(4) "Award" means the reimbursement provided to an owner or operator or person owning a home heating oil tank system for

eligible costs incurred because of a petroleum product discharge from a petroleum product storage system or home oil tank system.

(5) "Bodily injury" has the meaning under s. 101.143 (1) (ad), Stats., however, this term shall not include those liabilities which, consistent with standard insurance industry practices, such as specified in s. Ins 6.35, are excluded from coverage in liability insurance policies for bodily injury.

(6) "Claimant" means any party who is eligible to submit a claim for an award under this chapter. Under this chapter, the claimant may also be the responsible party.

(7) "Closed remedial action" means that the department or the DNR has determined, based on information available at the time, that no further action is necessary. A closed remedial action includes the approval of remediation by natural attenuation as a final site remedy. A determination that no further action is required might include one or more deed or use restrictions placed on a property, or other requirements, which are conditions for approval.

(8) "Consultant" means a person who performs or provides professional investigation, interpretation, design or technical project management services including, but not limited to, conducting site investigations, preparing remedial action plans and alternatives, and interpretation of data for passive or active bio−remediation systems. An owner or operator may prepare bid documents and complete other requirements of the bid process without being designated as a consultant.

(9) "Consulting firm" means a corporation, partnership, sole proprietor or independent contractor who performs or provides professional engineering or hydrogeology services including but not limited to conducting site investigations, preparing remedial action plans and alternatives, designing and supervising the installation of remedial systems and plans for passive bio−remediation with long−term monitoring.

(10) "Costs incurred" means costs integral to the remediation of a site which have been paid by a responsible party. Costs are considered incurred when funds are disbursed to the creditor, i.e., invoices have been paid and verification is available.

(11) "Department" means the Wisconsin department of commerce.

(12) "Discharge" means spilling, leaking, pumping, pouring, emitting, or emptying, but does not include dumping.

(13) "DNR" means the Wisconsin department of natural resources.

(14) "Emergency action" means an immediate response to protect public health or safety.

Note: An emergency action would normally be expected to be directly related to a sudden event or discovery. Simple removal of contaminated soils, recovery of free product, or relief from financial hardship are not considered emergency actions.

(15) "Entity" means any of the following:

(a) A person owning a home oil tank system.

(b) A business required to maintain a worker's compensation insurance policy under ch. DWD 80.

(c) An owner or operator who is completely independent of any other business or corporation with coverage under the PECFA program.

(16) "Financial hardship claimant" means a claimant that has employed no more than 4 individuals, who are not immediate family members, at any time during the year prior to claim submittal and is able to document this through payroll or tax records.

(17) "Fund" means the petroleum environmental cleanup fund administered by the department.

(18) "Grossly negligent" means the conscious or reckless disregard for the negative consequences of one's actions or inaction.

(19) "Heating oil" has the meaning set forth in s. Comm 10.01 (43).

Note: Section Comm 10.01 (43) defines heating oil as petroleum that is No. 1, No. 2, No. 4−light, No. 4−heavy, No. 5−light, No. 5−heavy, and No. 6 technical grade of fuel oil; other residual fuel oils, including Navy Special Fuel Oil and Bunker C; and other fuels such as kerosene when used as substitutes for one of these fuel oils used for heating purposes. Heating oil is typically used in the operation of heating equipment, boilers or furnaces.

(20) "Home heating oil tank systems" has the meaning set forth in s. 101.143 (1) (cm), Stats.

Note: Section 101.143 (1) (cm), Stats., defines a home heating oil tank system as an underground home heating oil tank used for consumptive use on the premises together with any on−site integral piping or dispensing system.

(21) "Immediate family members" means parents, stepparents, grandparents, children, stepchildren, grandchildren, brothers (and their spouses), sisters (and their spouses), aunts, uncles, sons−in−law or daughters−in−law of the claimant or the claimant's spouse.

(22) "Independent" means entirely and completely free from any common control, guidance, ability to influence, significant financial interest or mutual benefit. Significant financial interest means ownership of more than 5% of a firm or business entity by the consulting firm, consultant or the consultant's family.

(23) "Interim action" means a response action taken to contain, stabilize or recover a discharge of a hazardous substance, in order to minimize any threats to public health or safety, while other response actions are being taken or planned for the site or facility.

(24) "Investigation awards" means awards that are made for investigative activities when no discharge is found, if the owner, operator or person owning a home heating oil tank system has written direction from the department to conduct an investigation under s. Comm 47.025 (5).

(25) "Loan secured" means the point at which a financial organization and customer have completed all documents associated with a commitment of funds and an agreement to repay the funding. The term applies to original loans and to the creation of additional funding.

(26) "Natural attenuation" means the reduction in the concentration and mass of a substance and its breakdown products in groundwater or soils, or both, due to naturally occurring physical, chemical or biological processes.

(27) "Occurrence" has the meaning set forth in s. 101.143 (1) (cs), Stats.

Note: Section 101.143 (1) (cs), Stats., defines occurrence as a contiguous contaminated area resulting from one or more petroleum product discharges.

(28) "Operator" has the meaning set forth in s. 101.143 (1) (d), Stats.

Note: Section 101.143 (1) (d), Stats., defines operator as:

(d) 1. A person who operates a petroleum product storage system, regardless of whether the system remains in operation and regardless of whether the person operates or permits the use of the system at the time the environmental pollution occurs; or

2. A subsidiary or parent corporation of the person specified under subd. 1.

(29) "Outstanding unreimbursed loan amount" means funds that have been disbursed by the financial organization for actual costs incurred by the borrower's service providers and any earned interest charges, less any amounts reimbursed by the PECFA program.

(30) "Owner" is an entity under the PECFA program or a trust and in addition has the meaning set forth in s. 101.143 (1) (e), Stats.

Note: Section 101.143 (1) (e), Stats., defines owner as any of the following:

(e) 1. A person who owns, or has possession or control of, a petroleum product storage system or who receives direct or indirect consideration from the operation of a system regardless of whether the system remains in operation and regardless of whether the person owns or receives consideration at the time the discharge occurs;

2. A subsidiary or parent corporation of the person specified under subd. 1.

(31) "Passive bio−remediation" has the same meaning as "natural attenuation".

(32) "PECFA" means the petroleum environmental cleanup fund, as established in s. 101.143, Stats.

(33) "Person" has the meaning set forth in s. Comm 10.01 (66).

Note: Section Comm 10.01 (66) defines person as an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, politi-

cal subdivision of the state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States government.

(34) "Petroleum product" has the meaning set forth in s. 101.143 (1) (f), Stats.

Note: Section 101.143 (1) (f), Stats., defines a petroleum product as gasoline, gasoline−alcohol fuel blends, kerosene, fuel oil, burner oil, diesel fuel oil or used motor oil.

(35) "Petroleum product storage system" has the meaning set forth in s. 101.143 (1) (fg), Stats.

Note: Section 101.143 (1) (fg), Stats., defines a petroleum product storage system as a storage tank that is located in Wisconsin and is used to store petroleum products together with any on−site integral piping or dispensing system. The term does not include pipeline facilities; tanks of 110 gallons or less capacity; residential tanks of 1,100 gallons or less capacity storing petroleum products that are not for resale; farm tanks of 1,100 gallons or less capacity storing petroleum products that are not for resale, except as provided in sub. (4) (ei) ; tanks used for storing heating oil for consumptive use on the premises where stored, except for heating oil tanks owned by school districts and heating oil tanks owned by technical college districts and except as provided in sub. (4) (ei) ; or tanks owned by Wisconsin or the federal government.

(36) "Pollution impairment" means bodily injury or property damage arising from the actual, alleged or threatened discharge, dispersal, seepage, migration, release, or escape of a petroleum product.

(37) "Prime rate" means the most recent rate published in the *Wall Street Journal* under Money Rates – Prime Rate.

Note: The prime rate is the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks.

(38) "Program year" has the meaning set forth in s. 101.143 (1) (g), Stats.

Note: Section 101.143 (1) (g), Stats., defines program year as the period beginning on August 1 and ending on the following July 31.

(39) "Progress payment" means an award made prior to the full completion of a remediation and may include payments after completion of an emergency action, site investigation, remediation, maintenance or operation, or other points as defined in this chapter.

(40) "Property damage" has the meaning set forth in s. 101.143 (1) (gm), Stats.

Note: Section 101.143 (1) (gm), Stats., defines property damage as not including those liabilities which are exclusions in liability insurance policies for property damage, other than liability for remedial action associated with petroleum product discharges from petroleum product storage systems. The statute also excludes loss of fair market value.

(41) "Remedial action plan" means a document that reports a remedial action alternative and provides the basis for its recommendation along with projected costs and other required detail.

(42) "Responsible party" means either the owner, operator, person owning a home oil tank system or claimant who is financially responsible for all costs of remediation of a discharge of petroleum product.

(43) "Site bundling" means providing investigation or remedial action services, or both, for multiple occurrences while utilizing one consulting firm or common commodity services and providers, or both.

(44) "Service provider" has the meaning set forth in s. 101.143 (1) (gs), Stats.

Note: Section 101.143 (1) (gs) defines service provider as a consultant, testing laboratory, monitoring well installer, soil boring contractor, other contractor, lender or any other person who provides a product or service for which a claim for reimbursement has been or will be filed under this section (ch. Comm 47), or a subcontractor of such a person.

(45) "Site investigation" means the investigation of a petroleum product discharge to provide the information necessary to define the nature, degree and extent of a contamination and to allow a remedial action alternative to be selected.

(46) "Subsidiary or parent corporation" has the meaning set forth in s. 101.143 (1) (h), Stats.

Note: Section 101.143 (1) (h) defines subsidiary or parent company as a business entity, including a subsidiary, parent corporation or other business arrangement, that has elements of common ownership or control or that uses a long−term contractual arrangement with a person to avoid direct responsibility for conditions at a petroleum product storage system site.

(47) "Tank" has the meaning set forth in s. Comm 10.01 (90).

Note: Section Comm 10.01 (90) defines tank as a stationary device designed to contain an accumulation of regulated substances and constructed of non−earthen material, such as concrete, steel or fiberglass, that provides structural support.

(48) "Third−party claim" means a claim against a claimant for personal injury or property damage associated with a discharge from an underground petroleum product storage tank system under this chapter.

(49) "Underground petroleum product storage tank system" has the meaning set forth in s. 101.143 (1) (i), Stats.

Note: Section 101.143 (1) (i), Stats., defines underground petroleum product storage tank system as an underground storage tank used for storing petroleum products together with any on−site integral piping or dispensing system with at least 10% of its total volume buried in the ground.

(50) "Upgrade" means the addition or retrofit of a petroleum product storage tank system with cathodic protection, lining or spill and overfill controls.

(51) "Used motor oil" means oil from internal combustion engines, collected and stored in accordance with s. Comm 10.335.

(52) "Willful neglect" means the intentional failure to comply with the laws or rules of the state concerning the storage of petroleum products and may include, but is not limited to, the failure to:

(a) Conduct leak detection procedures;

(b) Take out of service a tank system that by reason of operational characteristics or leak detection is suspected of causing a discharge to the environment;

(c) Immediately shut down and repair a leaking tank system;

(d) Conduct a required product inventory;

(e) Comply with tank system use permit requirements;

(f) Comply with plan review, installation or inspection requirements under ch. Comm 10;

(g) Register or actions to de−register an underground or aboveground tank system in order to avoid regulation under ch. Comm 10; or

(h) Maintain corrosion protection on a system's tank or lines.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; r. and recr. Register, December, 1998, No. 516, eff. 1−1−99.

Comm 47.02 Coverage. (1) PETROLEUM PRODUCT STORAGE TANK SYSTEMS. Owners or operators of a petroleum product storage systems are eligible for reimbursement from the fund provided claims are for underground or aboveground petroleum storage systems that are one or more of the following:

(a) Commercial tank systems larger than 110 gallons capacity.

(b) Heating oil tank systems where the petroleum product is sold.

(c) Farm or residential tank systems larger than 1,100 gallons capacity and not storing heating oil for consumptive use on the premises.

(d) Tank systems storing gasoline, diesel fuel or other vehicle fuel, other than residential tanks of 1,100 gallons or less capacity.

(e) Farm vehicle fuel systems of 1,100 gallons or less capacity, which meet the requirements in s. 101.143 (4) (ei) 1. a., Stats., regarding farm size and farm income, and is used to store products not for resale.

(f) Heating oil tank systems owned by public school or technical college districts, supplying heating oil for consumptive use on the premises.

(g) Tank systems located on trust lands of an American Indian tribe or band if the owner or operator's tank system would be otherwise covered under pars. (a) to (f) and the owner or operator complies with this chapter and ch. Comm 10 and obtains all applicable agency approvals.

(2) HEATING OIL TANK SYSTEMS. A person owning a home heating oil tank system is eligible for reimbursement from the fund provided the claim is for a heating oil tank system that is an underground home heating oil tank system and the person complies with this chapter and ch. Comm 10.

(3) EXCLUSIONS. The fund does not cover a claim for any of the following:

(a) A pipeline facility.

(b) A commercial tank system of 110 gallons or less capacity.

(c) A residential motor fuel tank system of 1,100 gallons or less capacity.

(d) Any tank system that is federal or state owned.

(e) Any tank system of 110 gallons or less capacity which is not used for the storage of home heating oil.

(f) A nonresidential heating or boiler tank system where the product is used on the premises where it is stored.

(g) An underground petroleum product storage tank system or home oil tank system that meets the performance standards in 40 CFR 280.20 or s. Comm 10.51, was installed after December 22, 1988, and from which a release was confirmed after December 31, 1995.

(h) An underground petroleum product storage tank system or home oil tank system that meets the upgrading requirements in 40 CFR 280.21 (b) to (d) or s. Comm 10.52 (2) to (4) and a discharge is confirmed after December 31, 1995, and the discharge is confirmed, or remedial activities begun, after the day on which the system first met the upgrading requirements.

(i) A new aboveground petroleum product storage tank system that meets the performance standards promulgated in rules by the department, installed after April 30, 1991, and from which a discharge is confirmed after December 22, 2001.

(j) An aboveground petroleum product storage tank system that meets the upgrade requirements promulgated by the department and a discharge is confirmed after December 22, 2001, and the discharge is confirmed, or remedial activities begun, after the day on which the petroleum system first met the upgrading requirements in rules promulgated by the department.

(k) Any other tank system not included under sub. (1).

History: Cr. Register, February, 1994, No. 458, eff. 3–1–94; r. and recr. Register, December, 1998, No. 516, eff. 1–1–99.

Comm 47.025 Awards. (1) GENERAL. (a) If the department determines that the claimant meets all of the eligibility requirements of this chapter, the department shall determine a deductible amount and issue an award to reimburse the claimant for eligible costs incurred in a remediation.

(b) The department may not issue an award before all eligible costs have been incurred unless the department determines that the delay in issuing the award would cause a financial hardship to the owner, operator or the person owning a home oil tank system. The department may issue progress payments when sufficient evidence of completion of various activities, as specified in ss. Comm 47.12, 47.35 and 47.355, are received.

(2) UNDERGROUND STORAGE TANK SYSTEMS. (a) *Award schedule.* The department shall issue an award under this subsection for a claim filed after July 31, 1987, for eligible costs incurred on or after August 1, 1987, and before July 1, 1998, by the owner or operator of an underground petroleum product storage tank system. Otherwise eligible costs incurred because of a product discharge, for which investigation or emergency actions are taken prior to July 1, 1998, shall be determined to be costs incurred before July 1, 1998, as specified in s. 101.143 (4) (d) 1., Stats.

(b) *Award maximums.* The department shall issue an award under this subsection without regard to fault in an amount equal to the amount of the eligible costs that exceeds a deductible amount, as specified in s. Comm 47.34. An award issued under this paragraph may not exceed the following for each occurrence:

1. For an owner or operator of an underground petroleum product storage tank system that is located at a facility at which petroleum is stored for resale or an owner or operator of an underground petroleum product storage tank system that handles an annual average throughput of more than 10,000 gallons of petroleum per month, $1,000,000; and

2. For an owner or operator other than an owner or operator under subd. 1., $500,000.

(c) Annual aggregates. The department may not issue awards under this subsection to an owner or operator for eligible costs incurred in one program year that total more than the following:

1. For an owner or operator of 100 or fewer underground petroleum product storage tank systems in the state of Wisconsin during a program year, $1,000,000; and

2. For an owner or operator of more than 100 underground petroleum product storage tank systems in the state of Wisconsin, at least at one point during a program year, $2,000,000.

(3) OTHER PETROLEUM PRODUCT STORAGE SYSTEMS. (a) *Awards for certain owners or operators.* 1. The department shall issue an award under this subsection for a claim for eligible costs incurred by the owner or operator of a petroleum product storage system that is not an underground petroleum product storage tank system or for eligible costs incurred on or after July 1, 1998, by the owner or operator of an underground petroleum product storage tank system where no investigation or emergency actions took place before July 1, 1998.

2. The department shall issue an award for a claim under this subsection without regard to fault in an amount equal to the amount of the eligible costs, as specified in s. Comm 47.35, that exceeds a deductible amount for eligible costs incurred before July 1, 1993, or a deductible amount of $10,000 for eligible costs incurred on or after July 1, 1993. An award issued under this subsection may not exceed $195,000 for eligible costs incurred before July 1, 1993, or $190,000 for eligible costs incurred on or after July 1, 1993, for each occurrence.

(b) Annual aggregates. The department may not issue awards under this subsection to an owner or operator for eligible costs incurred in one program year that total more than $195,000 for eligible costs incurred before July 1, 1993, or $190,000, for eligible costs incurred on or after July 1, 1993.

(4) HOME HEATING OIL TANKS. (a) The department shall issue an award for a claim filed for eligible costs incurred on or after August 1, 1987, by a person who owns a home oil tank system.

(b) The department shall issue the award under this subsection without regard to fault for each home oil tank system in an amount equal to 75% of the amount of the eligible costs.

(c) An award issued under this subsection may not exceed $7,500.

(5) INVESTIGATIONS. (a) The department shall issue an award for a claim filed after August 9, 1989 for eligible costs incurred on or after August 1, 1987, by an owner, operator or person owning a home oil tank system in investigating the existence of a discharge or investigating the presence of petroleum products in soil or groundwater if the investigation is undertaken at the written direction of the department to conduct an investigation under this provision, and no discharge or contamination is found.

(b) If an award has been made under this subsection and a discharge or contamination is found in a subsequent investigation, the department shall reduce the award under s. Comm 47.35, by the amount paid under this subsection.

(6) THIRD–PARTY CLAIMS. For owners or operators of underground storage tank system discharges eligible for PECFA, third–party damages resulting from petroleum product discharges may be eligible for reimbursement under the PECFA fund. Items which may not be reimbursed include, but are not limited to, costs for which the owner or operator is not legally liable; costs associated with discharges based on or attributed to a criminal act; intentional, willful or deliberate noncompliance with any statute or

administrative rule; punitive or exemplary damages; and federal, state or local fines, forfeitures or other penalties.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94**;** am. (1) (b) and (5) (a), r. (1) (c), Register, December, 1998, No. 516, eff. 1−1−99.

Comm 47.03 Emergency awards. The department may, after determining that an emergency exists, make an award in advance of claims received prior to the emergency claim. The finding of an emergency shall be made based upon an immediate need to protect public health or safety. The finding of an emergency may not be based upon financial hardship of the responsible party or its agent. A determination that no emergency exists may not be appealed to the department.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; r. (1), renum. (2) to be Comm 47.03, Register, December, 1998, No. 516, eff. 1−1−99.

Subchapter II — Program Eligibility

Comm 47.10 Initial claim eligibility. (1) GENERAL. (a) *Responsible parties.* Responsible parties may submit claims to the department pursuant to s. 101.143 (4), Stats., for reimbursement of eligible costs incurred because of a petroleum product discharge or discharges from a petroleum product discharge or discharges from a petroleum product storage system or home oil tank system.

1. If a responsible party is not the sole owner of the site, an Owner Assignment Certification form (ERS−8070) shall be filed with the department to establish one entity to submit the claim and receive the award under this chapter.

2. The responsible party, owner or operator, agent or an assignee, as established in subd. 1., may submit a claim if all of the following are performed:

a. Documentation that the source of a discharge or discharges is from a petroleum product storage system or home oil tank system;

b. Notification to the department, before conducting a site investigation or remedial action activity, of the potential for submitting a claim under this chapter, except in emergency situations as provided under s. 101.143 (3) (g), Stats.;

Note: Notification to the department means contacting the department and providing demographic information on the potential PECFA site. Notification does not mean the original report to the DNR of a release to the environment.

c. Registration of the petroleum product storage system or the home oil tank system with the department under s. 101.09, Stats.;

d. Report of the discharge in a timely manner to the division of emergency government in the department of military affairs or to the DNR, according to the requirements under ch. 292, Stats.;

e. Investigation of the degree and extent of environmental damage caused by the discharge from a petroleum product storage system or home oil tank system;

f. Recovery and proper disposal of any recoverable petroleum products in the discharge from a petroleum product storage system or home oil tank system;

g. Disposal of any residual solid or hazardous waste in a manner consistent with local, state and federal laws, rules and regulations;

h. Verification that the owner has maintained the site in compliance with laws and rules of the state concerning the storage of petroleum products; and

i. Restoration of the environment according to applicable standards using the most cost−effective approvable alternative available.

(b) *Agents.* 1. 'Individuals as agents.' Except as specified in subd. 2., an owner or operator or the person owning a home oil tank system may, with the written approval of the department, enter into a written agreement with another person to act as an agent. An agent, in order to be approved and receive payment under the fund, shall agree to complete the remediation up to the point of operation and maintenance or long−term monitoring. The agent and the owner, operator, or person owning the home oil tank system shall jointly submit a claim for an award after completing all applicable requirements under this chapter and submittal of a Current Agent Assignment Certification form (ERS−8079) to the department. An award made under this paragraph shall be made payable to both the agent and owner, operator or person owning the home oil tank system.

2. 'Department of transportation as agent.' With prior written approval of the department and the owner, operator or the person owning the home oil tank system, the department of transportation may act as an agent as specified in subd. 1., when the petroleum product storage system or home oil tank system is located on property that is or may be affected by a transportation project under the jurisdiction of the department of transportation. The scope of the department of transportation shall be limited to the activities under subd. 3. The department of transportation shall submit the claim for an award as specified under this section with the award to be jointly paid to the owner, operator or the person owning the home oil tank system and the department of transportation for eligible costs incurred by the department of transportation in conducting the activities specified under subd. 3.

3. 'Activities of agents.' All agents shall be limited to the following activities:

a. Completing the site investigation to determine the degree and extent of the environmental contamination caused by the discharge from a petroleum product storage tank system or a home oil tank system and preparing the analysis and report as specified in s. Comm 47.337.

b. Conducting bids for all commodity services necessary at the site to restore the environment and minimize the harmful effects from the petroleum products discharge up to point of operation and maintenance or long−term monitoring.

Note: Copies of the department forms required in this code are available from the department at the address shown in the Appendix.

(2) PROVISIONS OF ELIGIBILITY LETTER. (a) When an owner, operator or person owning a home oil tank system has registered the tank systems on the property associated with the discharge and notified the department as specified under s. Comm 47.11, the department shall upon request of the responsible party provide a letter of eligibility determination. This letter may include information on the PECFA program and the department's initial determination of the eligibility for an award under this chapter.

(b) The initial eligibility determination is made by the department based upon the information made available prior to the determination.

(c) This letter of eligibility may be used in securing loans to cover estimated costs for a proposed remediation.

(d) The initial estimate of eligibility shall not be binding if subsequently the owner, operator, person owning a home heating oil tank system or other source provides the department with additional information which necessitates a subsequent ineligibility determination to be made by the department.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; am. (1) (a) 1., (b) 1., 3. a. and b., r. (1) (b) 3. c., Register, December, 1998, No. 516, eff. 1−1−99.

Comm 47.11 Tank registration. (1) The department has the authority to inventory and determine the location of aboveground and underground petroleum storage tanks systems as specified in s. 101.142 (2), Stats. Tank systems shall be registered with the department on forms provided by the department. Eligibility determination of awards under the scope of this chapter requires prior tank registration.

(2) All aboveground petroleum product storage tank systems shall be registered with the department. Exceptions are for any of the following:

(a) Pipeline facilities.

(b) Tank systems of 110 gallons or less capacity.

(c) Residential tank systems of 1,100 gallons or less capacity.

(3) All underground petroleum product storage tank systems larger than 60 gallons capacity shall be registered with the department.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; r. and recr. Register, December, 1998, No. 516, eff. 1−1−99.

Comm 47.115 Nonregistered tanks and out−of−service tanks. (1) All aboveground and underground petroleum storage tanks not previously registered, having no completed Underground Petroleum Product Tank Inventory form (ERS−7437) or Aboveground Petroleum Product Tank Inventory form (ERS−8731) on file with the department, shall be registered prior to submitting a claim for an award under the scope of this chapter.

Note: Copies of the department forms required in this code are available from the department at the address shown in the Appendix.

(2) For all underground petroleum storage tanks removed, closed or out−of−service prior to the date of tank registration, as specified in s. 101.09, Stats., the present owner, operator or person owning a home oil tank system shall submit documentation to the department as to the existence of the tank, the product stored, the size and type of tank, and other information to substantiate prior ownership and use. This documentation may include, but is not limited to, neutral third−party testimony, county tax records, land titles, and blue prints of initial tank installations.

(3) Failure to register, de−registering or attempting to de−register a tank system in order to avoid regulation by the department shall be considered willful neglect, as specified in s. Comm 47.20 (7).

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; am. (1), Register, December, 1998, No. 516, eff. 1−1−99.

Comm 47.12 Claim process. (1) APPLICATION. A claimant shall submit a claim on a Remedial Action Fund Application form (ERS−8067) furnished by the department, and shall include all of the following:

(a) For a claim covering the site investigation and the preparation of a remedial action plan, a copy of the report providing the information detailed in s. NR 716.15 and the letter provided by the department indicating that the remedial action plan submittal requirements have been complied with and that submittal of the claim is authorized.

(b) A copy of the Underground Petroleum Product Tank Inventory form (ERS−7437) for each underground tank system at the site and a copy of the Aboveground Petroleum Product Tank Inventory form (ERS−8731) for each aboveground tank system at the site.

(c) The bid specifications and a copy of the bids for commodity services as required in s. Comm 47.33.

(d) Documentation verifying actual costs incurred because of the petroleum product discharge, which shall include receipts, invoices including contractor's and subcontractor's invoices, interest costs, loan fees, accounts, and processed payments.

(e) Proof of payment for all invoices including copies of both sides of canceled checks or money orders or alternate proofs of payment approved by the department.

(f) Properly detailed and itemized receipts for remedial activities and services performed.

(g) Owner's, operator's, home oil tank owner's or the responsible party's social security number or federal tax identification number.

(h) Other records or statements that the department determines to be necessary to complete the application.

(i) Signature of the owner, operator or person owning home oil tank system on the application.

(2) INCOMPLETE CLAIMS. (a) Incomplete claims, lack of verification of payment of costs, lack of signatures, and other factors may delay processing of claims or change the schedule of the review.

(b) Claims received by the department which contain unpaid invoices shall, at the department's discretion, be assigned a review date no earlier than the date proof of payment was provided to the department.

(c) PECFA claims for awards may not be processed without proper and complete documentation including, but not limited to, Underground Petroleum Product Tank Inventory forms (ERS−7437), Aboveground Petroleum Product Tank Inventory forms (ERS−8731), Remedial Action Fund Application form (ERS−8067), department letter indicating compliance with remedial action plan submittal requirements (investigation claim), report providing information detailed in s. NR 716.15 (investigation claim), proof of payment of costs incurred in remediation, approval of closed remedial action, responsible party's social security number or federal tax identification number, and other forms available from the department necessary for claim processing.

Note: Copies of the department forms required in this code are available from the department at the address shown in the Appendix.

(3) REQUEST FOR ADDITIONAL INFORMATION. (a) Once the department has begun the review of a claim, the department may request that additional information be submitted 15 business days from the date of the request. Otherwise, the claim may be deemed incomplete and progress payments may be denied. These claims, when complete, may be rescheduled for review after more recently received complete claims.

(b) The department may request additional information from owners, operators or persons owning home oil tank systems, agents, consultants, contractors or subcontractors as necessary.

(c) Failure to respond to a request, within the 15 business day response period for additional information, may result in a delay in payment, disallowance of interest costs accrued, action against a consultant, or scheduling a meeting with the responsible party and the department or other individuals.

1. The department may disallow interest costs accrued during the period when no response has been received, by issuing a letter stating the intent, on a specified date, to disallow payments on interest costs accrued during this period as specified in par. (c).

2. Appeal of disallowed interest costs, shall be conducted as specified in s. Comm 47.53.

(4) COSTS INCURRED IN REMEDIATION. (a) Forms shall be made available by the department which shall be completed by the owner, operator or person owning a home oil tank system, or agent prior to award payment. All invoices for costs incurred in a remediation shall be submitted with proof of payment verified.

(b) Only eligible costs, as specified in s. Comm 47.30, that have been paid, shall be submitted for an award. The department may use its published cost guidelines to determine if the level of reimbursement requested is excessive and may disallow costs if they are determined to be excessive.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; r. and recr. (1), am. (2) (c), Register, December, 1998, No. 516, eff. 1−1−99.

Comm 47.13 Exclusive remedy and liability. The PECFA fund awards for remediation activities and is not intended to result in owners or operators or persons owning home oil tank systems making any profit or receiving duplicate payment in a remediation. As specified in s. 101.143 (7) (am), Stats., an award made under this chapter is the exclusive method of recovery for costs reimbursed under the fund.

Note: Section 101.143 (7), Stats., states that no common law liability and no statutory liability, which is provided in a statute other than this section, for damages resulting from a petroleum product storage system or home oil tank system is affected by this section. Exceptions being that the authority, power and remedies provided in any other statute or law are in addition to any authority, power or remedy provided in any statute or common law.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94.

Comm 47.14 Right to recover actions. The department reserves the right to take action against an owner, operator or person owning a home oil tank system, or their agents or designees to recover any award or portion of an award resulting from a fraudulent claim.

(1) RIGHT OF ACTION. A right of action under this section shall accrue to the state against an owner, operator or other person if the owner, operator or other person submits a fraudulent claim or does not meet the requirements under this chapter or if an award is issued under this section to the owner, operator or other person for ineligible costs under this section.

(2) ACTION TO RECOVER AWARDS. The department shall request the attorney general to take action as is appropriate to recover awards to which the state is entitled or when the department discovers a fraudulent claim after an award is issued.

Note: Section 101.143 (5) (c), Stats., states that recovered funds shall be credited to the petroleum environmental cleanup fund.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94.

Comm 47.15 Assignment of awards. By written notification to the department, a claimant may make an assignment of an award to an institution which lends money to the claimant for the purpose of conducting remediation activities reimbursed under this chapter, as specified in s. 101.143 (4m), Stats. This assignment of an award creates and perfects a lien in favor of the assignee in the proceeds of the award.

Note: Section 101.143 (4m), Stats., states the lien secures all principal, interest, fees, costs and expenses of the assignee related to the loan. The lien under this subsection has priority over any previously existing or subsequently created lien, assignment, security interest or other interest in the proceeds of the award.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94.

Subchapter III — Program Disqualification

Comm 47.20 Ineligibility for an award. If the owner, operator or the person owning the home heating oil tank system had knowledge of, had previous involvement in, or whole or partial control over the operation or maintenance of the petroleum product storage system at the site, the owner, operator or the person owning the home heating oil tank system shall be ineligible for reimbursement under the scope of this chapter if any of the conditions in sub. (2) apply. The department shall deny a claim for an award under s. Comm 47.10 if any of the following conditions apply:

(1) The claim is not within the scope of this chapter;

(2) The claimant submits a fraudulent claim or fraudulent cost items;

(3) The claimant has been grossly negligent in the maintenance of the petroleum product storage system or home oil tank system;

(4) The claimant intentionally damaged the petroleum product storage system or home oil tank system;

(5) The claimant is unable to provide adequate documentation that clearly demonstrates the degree and extent of soil or water contamination resulting from a petroleum product discharge;

(6) The claimant intentionally falsified petroleum product storage records; or

(7) The claimant was guilty of willful neglect in complying with laws or rules of this state concerning the storage and handling of petroleum products.

Note: Section 101.143 (4) (f), Stats., states that contributory negligence shall not be a bar (barrier) to submitting a claim under this subsection and no award under this subsection may be diminished as a result of negligence attributable to the claimant or any person who is entitled to submit a claim.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94.

Subchapter IV — Reimbursement Procedures

Comm 47.30 Eligible cost items for remediation. **(1)** ELIGIBLE COSTS. Eligible costs for an award issued under this chapter may be determined by the department based upon cost guidelines published by the department. Costs related to the following categories may be reimbursed under the scope of this chapter:

(a) Claims submitted for an award by owners or operators who were not owners or operators, or persons owning home oil tank systems when a petroleum product discharge occurred and who meet all of the conditions of s. Comm 47.10, may submit a claim for an award under the scope of this chapter.

(b) Costs associated with emergency action, site investigation and remedial plan development, remediation, long−term monitoring or operation and maintenance:

1. Investigation of potential sources of contamination by precision testing to determine tightness of tanks and lines if the method used is approved by the department and the tester is certified by the department as specified in ch. Comm 10 and the testing is not designed to meet the regular leak detection responsibilities of the owner or operator;

2. Costs of eligible work performed after confirmation of a contamination;

3. Preparation of remedial action alternatives and plans;

4. Laboratory services for testing specific to this chapter, including full VOC testing during the investigation phase;

5. Full VOC testing after the investigation phase if required by the DNR for monitoring PECFA eligible products and PVOC testing during subsequent work phases; and

6. Investigation and assessment of the degree and extent of contamination caused by a petroleum product discharge from a petroleum product storage tank system or home oil tank system.

(c) Costs associated with excavation and disposal of contaminated soils:

1. Removal of contaminated soils;

2. Actual costs incurred which are associated with equipment mobilization;

3. Removal of petroleum products from surface waters, groundwater or soil; and

4. Treatment and disposal of contaminated soils including DNR approved procedures for bio−remediation.

Note: All soils shall be reported in tons when included in a claim.

(d) Costs associated with monitoring and other remedial action activities:

1. Monitoring of natural bio−remediation progress;

2. Actual charges for maintenance of equipment used for petroleum product recovery or remedial action activities;

3. Other costs identified by the department as necessary for proper investigation, remedial action planning and remedial action activities to meet the requirements of ch. 292, Stats.;

4. State or municipal permits for installation of remedial equipment;

5. Actual costs for the purchase or rental of temporary building structures of a size adequate to house remedial equipment; and

6. Restoration or replacement of a private or public potable water supply.

(e) Costs associated with personnel, travel and related expenses:

1. Contractor or subcontractor costs for remedial action activities;

2. Labor and fringe benefit costs associated with inspection and supervision other than specified in subd. 4.;

3. Actual costs incurred for travel and lodging which are not in excess of state travel rates; and

4. Actual verified labor, fringe benefit and equipment costs when claimants use their own personnel or equipment to conduct a remediation.

Note: A listing of state travel and meal rates may be obtained by writing to the department, Safety and Buildings Division, P.O. Box 7969, Madison, Wisconsin 53707.

(f) Costs associated with the preparation of a claim package under the scope of this chapter and other related costs:

1. Fees up to $500 for a certified public accountant, contractor, or other independent preparer for compiling a claim under this chapter; and

2. For an owner or operator only, compensation to third parties for bodily injury and property damage caused by a petroleum product discharge from an underground petroleum product storage tank system.

(g) Costs associated with the support or protection of existing utilities or structures located within the remediation area during a remediation.

Note: Reimbursement for the re−installation of utilities or structures, without prior department approval, may not be made.

(2) EXCLUSIONS FROM ELIGIBLE COSTS. The department has identified various costs determined to be ineligible for reimbursement. Section 101.143, Stats., lists specific cost items which may not be reimbursable under the PECFA program. In order to control costs and provide awards for the most cost−effective remediations of petroleum−contaminated sites within the scope of this chapter, the following costs may not be reimbursed:

(a) Costs determined to be unrelated to remedial action activities under the scope of this chapter:

1. Costs incurred on or before August 1, 1987 for a remediation;

2. Any costs not supported by cancelled checks or other absolute proof of payment at time of submittal;

3. Costs for cleanup resulting from spills from petroleum transportation equipment;

4. Any costs, excluding an emergency action, incurred before a confirmed discharge is reported to the DNR;

5. Any overtime labor charge, excluding an emergency action, billed at other than a straight time rate;

6. Costs for contamination cleanups from non−residential heating oil or boiler tank systems and discharges from mobile fueling tanks or fuel storage tanks on vehicles;

7. Costs associated with used oil remediations, if the oil is not from internal combustion engines;

8. Costs for investigations or remedial action activities conducted outside the state of Wisconsin;

9. Costs associated with environmental audits, environmental reconnaissance or real estate transactions, construction projects, new construction or long−term loan transactions;

10. Costs associated with investigation activities to locate petroleum product storage systems or home oil tank systems to determine eligibility for an award under the scope of this chapter;

11. Costs associated with emptying, cleaning, disposing of storage tank systems and other costs normally associated with closing or removing any petroleum product storage tank system or home oil tank system after November 1, 1991, unless the claimant has a signed contract for these services before November 1, 1991 or has a loan agreement, note or commitment letter for a loan for the purposes of conducting these services before November 1, 1991;

12. Laboratory rush charges, priority mail or priority shipping fees unless related to an approved emergency action;

13. Air travel;

14. Costs incurred after the DNR determines that no further remedial action is required, except for abandonment of monitoring wells and finalization of site closure; and

15. Other costs that the department determines to be associated with, but not integral to, the remediation of a petroleum product discharge from a petroleum product storage system or home oil tank system.

(b) Costs related to improper or incompetent remedial activities and services:

1. Costs associated with incompetent or non−effective cleanup actions which were not based upon sound professional and scientific judgment;

2. Costs of redoing remedial action activities or remedial action work which was incomplete or incompetent;

3. Costs associated with rework on remedial systems to accommodate construction, upgrades, retrofits, or redevelopment projects;

4. Any costs associated with actions that exceed the necessary activities to bring a site to the required level of remediation;

5. Costs associated with the repair or replacement of damaged buildings, sewer lines, water lines, electrical lines, phone lines, fiber optic lines or other utilities on the property;

6. Costs associated with the re−installation of damaged remedial equipment or the re−installation or modification of the remedial equipment for purposes other than effective remediation;

7. Additional interest costs accrued due to improper or incomplete filing of claims or non−response to department requests for additional information, exceptions being delays caused by the DNR or the department claim process; and

8. Any late service charges or any costs related to invoices or bills for which payment verification is unobtainable.

(c) Costs for testing or sampling unrelated to the investigation for the extent of contamination under the scope of this chapter:

1. Costs for sampling and testing for heavy metals, except lead testing when the discharge is verified to be from leaded gasoline, or lead and cadmium when the source is used motor oil;

2. Costs associated with the analysis for inappropriate constituents not normally part of or associated with an eligible petroleum product even if required by the DNR; and

3. Costs associated with full VOC testing after the investigation phase, unless required by the DNR for monitoring PECFA eligible products and the DNR letter documenting the requirement is submitted with the claim.

(d) Costs associated with tank system upgrades or retrofits, requirements for complying with other state or federal rules or laws, and future business plans:

1. Costs of repairing, retrofitting or replacing a petroleum product storage system or home oil tank system such as, but not limited to, tank bedding materials or fill for setting tanks, lines or canopies;

2. Costs associated with capital improvements, reinstallation of electrical, dispensers, pumps, or other items for retrofits, upgrades or new construction;

3. Costs for remedial action activities funded under 42 USC 6991, unless the owner or operator or the person owning the home oil tank system repays the funds provided under 42 USC 6991;

4. Expenditures required by the DNR or the department in order to meet the groundwater protection standards, ch. 160, Stats., ch. Comm 10 or other administrative rules but not related to a petroleum product discharge under this chapter;

5. Costs associated with loss of business;

6. Costs associated with the razing of buildings, removal of roads, removal of footings and foundations or other destruction of structures or other redevelopment costs;

7. Costs associated with loss of interest or dividends, or interest costs from a loan other than one for the remediation; and

8. Costs associated with cement, blacktop replacement, on−site landscaping or other improvements, except for depreciation costs for third−party actions.

(e) Costs associated with site closure:

1. Costs associated with the closure of a tank system;

2. Costs associated with tank closure assessments;

3. Costs of removing tank systems that have previously been closed in place with inert materials, sand, pea gravel, water or other substances; and

4. Costs associated with the abandonment of wells not related to the remedial action.

(f) Costs associated with legal issues:

1. Costs, other than costs for compensating third parties for bodily injury and property damage, which the department determines to be unreasonable or unnecessary to carry out the remedial action activities as specified in the approved remedial action plan;

2. Costs associated with third−party actions by adjoining property owners for the installation of monitoring wells or other cleanup−related items unless a court judgment has been obtained;

3. Costs associated with third−party damages from a discharge originating from an aboveground storage tank;

4. Attorney fees associated with third−party actions;

5. Any costs associated with an appeal of a determination specific to the scope of this chapter; and

6. Other attorney fees including, but not limited to, legal advice, appeals, or other representation on behalf of the responsible party or agent.

(g) Supervisory and management costs that the department determines to be unreasonable or unnecessary in carrying out the remedial action activities under this chapter:

1. Supervisory or management costs when a municipality or company uses their own personnel or personnel from a wholly− or partially−owned subsidiary for remedial activities;

2. Costs for supervisory or management activities conducted by owners or operators;

3. Costs incurred by a responsible party associated with bid requirements or project administration such as consultant selection, monitoring or supervising subcontractors or consultants;

4. Costs for right of entry or trespass fees; and

5. Separate vehicle and mileage costs.

(h) Costs determined by the department to be excessive.

(i) Subcontractor markups for work performed after January 31, 1993.

(j) Costs associated with general program support and office operation which are expected to be included in the hourly staff rates, including but not limited to:

1. Telephone charges;

2. Photocopying, faxes, paper, and printing;

3. Postage;

4. Hand tools and personal protective equipment; and

5. Computer equipment, CAD and software charges.

Note: For the purposes of this section, HnU meters, PID's, FID's, electronic equipment and sampling kits are not considered hand tools.

(k) Costs reimbursed by insurance companies unless performing in an agent role.

(3) CLAIMS INCLUDING INELIGIBLE COSTS. Claims submitted which include ineligible costs shall be considered incomplete and may be returned to the claimant for recalculation, revision and re−submittal. The claim shall be rescheduled for review when the ineligible costs have been removed and the claim received by the department. The department may disallow interest costs accrued during the non−response period, as specified in s. Comm 47.12 (3) (a).

(4) CONTAMINATIONS CONTAINING ELIGIBLE AND INELIGIBLE PRODUCTS. When a contamination is identified which contains both eligible and ineligible products under the fund, the following shall apply:

(a) Only the costs associated with the eligible products may be claimed. Eligible costs of remediation, which are only associated with the eligible product, may be claimed in their entirety, as specified in this section. Any costs required because of the presence of an ineligible product may not be claimed even if a remedial benefit may be derived by the remediation of the eligible product.

(b) The owner or operator and the department shall be notified immediately. The consultant, in conjunction with the owner or operator, shall propose a methodology to the department for dividing the costs of remediation between the eligible and ineligible products. Department approval of a methodology shall be obtained by the owner or operator prior to the submittal of any claims.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; r. and recr. (4), Register, December, 1998, No. 516, eff. 1−1−99.

Comm 47.305 Costs associated with loans. **(1)** INTEREST EXPENSE. (a) *Allowability of interest costs.* The fund will reimburse interest expense if a loan is specifically secured for a remediation and the proceeds are applied only to the cleanup at the site. To be eligible, interest costs cannot be combined with retrofits or construction loans and shall be site specific. Reasonable money management shall be practiced to avoid unnecessary accrual of interest charges. Interest expenses shall be managed in the most cost−effective manner possible and invoices shall be paid in a timely manner to avoid interest costs or late charges. If a line of credit is used to provide funding for a remediation, clear documentation shall be provided on the disbursements and interest expenses.

(b) *Ineligible interest expenses.* The PECFA fund shall not reimburse for the following items:

1. The opportunity cost of money or interest income or dividend income lost because of a decision to use internal funding for a remediation;

2. Interest costs which are not clearly documented;

3. Interest costs or late charges on invoices or bills; and

4. Additional interest costs accrued because of poor money management or the use of PECFA loan proceeds to earn money or for investment purposes.

(c) *Maximum interest and related costs.* 1. The following maximum rates are established for loans secured after January 31, 1993, and before October 15, 1997, for the purposes of a remediation:

a. Interest rate shall be reimbursable at no more than 2% above the prime rate.

b. Loan origination fees shall be reimbursable at no more than 2 points of the loan principal.

2. The following maximum rates are established for loans secured on or after October 15, 1997, for the purposes of a remediation:

a. Interest rate shall be reimbursable at no more than 1% above the prime rate.

b. Loan origination fees shall be reimbursable at no more than 2 points of the loan principal.

(d) *Annual services fees.* Annual loan service fees charged on or before April 20, 1998, shall be reimbursable at no more than 1% of the unreimbursed amount and remaining available loan balance. Annual loan service fees charged after April 20, 1998, shall be reimbursable at no more than 1% of the outstanding unreimbursed loan amount.

(e) *Documentation.* A copy of the loan agreement documenting the interest rate, loan origination fees, and other costs, shall be submitted when requested by the department.

(f) *Lending agreements.* In lieu of the maximum rates specified in par. (d), the department may negotiate agreements with lending institutions to obtain lower rates. The department may solicit proposals from lending institutions to supply loans for PECFA remediations.

(g) *Other items.* In addition to the maximum rates established in par. (c), the following shall apply:

1. Annual loan service fees shall be charged no more frequently than once annually.

2. Original and re−estimated loan amounts, to the extent feasible, shall reflect a sound estimate of the cost to perform the remediation. Excessive estimates which result in excessive or unnecessary interest costs may not be reimbursed by the PECFA fund.

(2) MINIMUM LOAN AMOUNTS. A lending institution may unilaterally establish a minimum loan amount of $100,000 or less. Minimum loan amounts of more than $100,000 and loan origination fees on minimum loans of more than $100,000 shall require prior written approval of the department.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; r. and recr. (1) (c) to (f), cr. (1) (g), Register, December, 1998, No. 516, eff. 1−1−99.

Comm 47.31 Incentives for cost−effective remediation. (1) GENERAL. The department may make incentives available to responsible parties who use the most cost−effective remediation methods and alternatives or participate in the voluntary bundling of sites for remediation purposes.

(2) INCENTIVES. For claimants who participate in the voluntary bundling of sites or for remediations that have approval as closed remedial actions and eligible costs not exceeding $80,000, excluding interest, the claim may receive priority review in the award process.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; am. Register, December, 1998, No. 516, eff. 1−1−99.

Comm 47.32 Cost guidelines. (1) GENERAL. The goal of the fund, as specified in s. Comm 47.01, is to assure the cost−effective remediation of eligible sites. As one tool in evaluating the costs of services and activities under the program, the department shall establish and publish cost guidelines.

(2) APPLICATION.. The cost guidelines established by the department may be used as one element in evaluating the cost effectiveness of investigation and remedial plan development efforts, requests for funding in excess of the investigation and remedial action plan cap, the estimated costs of a selected remedial alternative and other issues of cost related to a remediation.

(3) USE OF THE COST GUIDELINES.. In those instances where cost guidelines are used, they may form the basis for disallowing costs which are determined by the department to be excessive in nature or for denying additional funding when actual or proposed costs are determined to be excessive.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94.

Comm 47.33 Comparative proposals and bid processes for remediation activities and services. Except for home oil tank owners and department approved emergency actions, the purchase of consulting and commodity services, not already covered by a detailed written contract, as of February 1, 1993, shall conform to the procedures in this section. In order to qualify as an existing contract, the document shall be with a specific service provider and shall specify contract items, such as but not limited to, the project details, time limitations, projected completion dates, payment terms and other standard contract language.

(1) GENERAL. (a) *Consulting firm selection.* 1. An owner or operator shall select a qualified consulting firm to conduct the site investigation and the development of a remedial action plan . The owner or operator shall select and contract with a consulting firm after making a comparison of qualified consulting firms by obtaining and reviewing a minimum of 3 proposals for services or utilizing another selection process approved by the department.

2. The proposals at a minimum, shall include the consulting firm's approach to the site, schedule of fees charged by the consulting firm, a statement of qualifications and experience, names of individuals for whom work has been performed who may be contacted for references and the following statement:

"Although the Petroleum Environmental Cleanup Fund (PECFA) may reimburse a substantial share of the cost of conducting a remediation of a petroleum contamination, the owner will have a program deductible which they must pay. In addition, there may be costs that are not covered by the PECFA fund or are above the maximums that will be reimbursed for by the fund. A remediation may cost you more than the deductible."

3. The services of the selected consulting firm shall be limited to providing the consulting services or scientific evaluations necessary to conduct an environmental response. Neither the consulting firm nor any company or consultant not independent of the consulting firm or project consultants may provide any of the commodity services required in the remediation.

(b) *Purchase of commodity services.*. 1. All commodity services which include, but are not limited to, soil borings, monitoring−well construction, laboratory analysis, excavation and trucking shall be obtained through a competitive bid process. A minimum of 3 bids are required to be obtained and the lowest cost service provider shall be selected. An employe of a commodity service provider may not participate in the preparation of bid documents or other requirements of the bid process, except for providing technical material, if the employe's firm is a bidder.

2. Consulting firms may elect to bid laboratory services on a calendar−year basis in order to obtain volume discounts and reduce the number of bids that shall be completed for each remediation. In completing the competitive bid process, the consulting firm shall obtain a minimum of 3 written bids from qualified firms that respond to the specifications and estimated volume of work provided by the consulting firm. Only PECFA−eligible laboratory work shall be included in the analysis to determine the lowest cost service provider. The lowest bid shall be accepted. All discounts, rebates and savings shall be reflected in the PECFA claim.

3. The analysis of laboratory tests for passive or active bio−remediation and the performance of pump or pilot tests may be accomplished by either consultants or commodity providers. If these services are obtained by a consulting firm, as part of their consulting service, then the bidding of this service shall not be required.

4. An owner or operator may appeal to the department to obtain approval to select other than the lowest cost commodity service provider. The department may approve an appeal if it determines that the use of another service provider will further the goals of the program.

(c) *Remediation alternative.* 1. The owner or operator shall select the lowest cost remediation alternative that will result in a closed remedial action. The responsible party may select a higher cost alternative if he or she certifies to the department in writing that the additional costs will not be claimed for PECFA reimbursement.

2. A higher cost remediation alternative may be allowed by the department if it determines that the alternative would further the goals of the program.

(2) REMEDIATION. For sites for which a remedial alternative was received by the department before April 21, 1998, the following shall apply:

(a) The estimated cost for the selected remediation alternative contained in the remedial action plan shall provide a separate dollar amount for consulting services and for commodity items. The estimated costs for these items shall be submitted to the department as part of the comparison of remedial alternatives or, if the submittal of the alternatives is not required as specified in s. Comm 47.335 (3) (c), prior to the start of the remedial activities.

(b) A dollar amount approved by the department shall establish the maximum reimbursable amount for consulting services during the remediation.

(c) The cost detail for the selected remediation alternative shall establish the total estimated cost for the remediation up to receiv-

ing approval as a closed remedial action. The estimate may be used to establish a maximum reimbursable amount. If the estimated consulting or commodity costs are established as maximum reimbursable amounts, and one or both will be exceeded, the consultant shall immediately notify in writing the claimant and the department of the anticipated actual cost.

(d) If it is determined that the consulting or commodity services may not be completed within the original estimate, the owner or operator and the consultant shall provide a written account, to the department, of the additional work to be performed in order to prove the need for additional funding. Failure to obtain written approval of the additional costs by providing justification acceptable to the department shall constitute grounds for disallowing the additional expenses. Cost guidelines, as published by the department, may be used as one factor in determining if an approval for additional work is warranted.

(3) COMMODITY ITEMS REQUIRING COMPETITIVE BIDDING. The following items shall be competitively bid. All bids shall be in units standard to the industry.

(a) Excavation of petroleum−contaminated soils;

(b) Trucking of petroleum−contaminated soils or backfill material;

(c) Thermal treatment of petroleum−contaminated soils;

(d) Laboratory services including mobile labs;

(e) Backfill material;

(f) Drilling and installing monitoring wells;

(g) Soil borings;

(h) Surveying if the service requires a registered land surveyor; and

(i) Other non−consulting services.

(4) COMMODITY BUNDLES. The owner or operator may combine individual commodity items into one bid. These bundles of commodities shall be bid by at least 3 service providers and the lowest cost service provider shall be selected.

(5) EXEMPTIONS. (a) Commodity items with a purchase price of $1,000 or less shall be exempt from the competitive bid requirement. The exclusion from commodity bidding may not be used if a service is to be used multiple times and the cumulative cost exceeds $1,000.

(b) The department may exempt specific services from the competitive bid process if the department determines that the conduct of the bid proposal process is unlikely to further the remediation process or the goals of the program.

(6) DOCUMENTATION. The owner or operator shall maintain the documents and data used in the competitive bid and selection process. These records shall be maintained and provided to the department if requested as part of the claim review or audit processes.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; r. and recr. (intro.) to (2), r. (3) and (4), renum. (5) to (8) to be (3) to (6) and am. (5) (a), Register, December, 1998, No. 516, eff. 1−1−99.

Comm 47.335 Site investigation and remedial action plan development cap. (1) GENERAL. Site investigations which were not started as of January 15, 1993, and for which a remedial alternative was received by the department before April 21, 1998, shall conform to this section.

(2) MAXIMUM ALLOWABLE COST. The maximum allowable cost for a site investigation and the development of a remedial action plan shall be no more than $40,000, excluding interest, feasibility testing, and interim action costs, unless approved under par. (a).

(a) If the investigation will exceed $40,000, the responsible party or its agent, shall contact the department in writing and provide an estimate of additional work and funding required and obtain the department's approval. If the additional approval is not obtained, costs above the $40,000 level will not be reimbursed.

(b) The consultant is responsible for monitoring the costs incurred in the investigation and remedial plan development and identifying that the $40,000 maximum may be exceeded. The consultant shall notify the owner, in writing, at the earliest point at which the consultant may know, or may have been reasonably expected to know, that the maximum allowable cost may be exceeded and that the approval of the department shall be obtained before any costs above $40,000 will be reimbursed by the department. The notification to the owner shall be made before the owner has incurred liabilities above the $40,000 maximum.

(3) CONSIDERATION OF ALTERNATIVES. (a) The remedial action plan developed for the site shall include a consideration of at least 3 alternatives, one of which shall be passive bio−remediation with long−term monitoring. The consideration of alternatives shall include a basic comparison of costs and the recommended alternative shall have a detailed cost estimate. If passive bio−remediation with long−term monitoring is feasible but not the recommended alternative, a clear rationale shall be provided as to why this alternative is not acceptable. Costs of long−term monitoring, or operation and maintenance shall be included in the comparison of costs in considering the alternatives.

(b) If the consideration of the passive bio−remediation or monitoring alternative shall be excluded because of site characteristics, the alternative shall be replaced by consideration of another alternative. If an alternative is substituted for the passive bio−remediation or monitoring alternative, the reason for this change shall be documented in the analysis.

(c) 1. The comparison of alternatives shall be a concise document written so that the responsible party and the department may easily compare alternatives. Only alternatives which are reasonably expected to be approved may be included in the comparison. The comparison of alternatives shall be submitted to the department if the proposed alternative is greater than $80,000. The comparison submitted to the department shall not include the full remedial action plan, unless requested by the department.

2. If the comparison document is determined by the department to be excessive or non−approvable alternatives are included, the department may require that the comparison be revised and resubmitted.

(4) START OF INVESTIGATION. An investigation shall be considered started if, after confirmation of a contamination is obtained, additional soil borings, soil sampling or monitoring−well construction have begun. In addition, the work on the site shall have an element of continuity. If work on a site stops for a period of 2 years or more, the site shall then fall under s. Comm 47.335 (2) and (3) or 47.337 depending on whether a remedial alternative was received by the department as of April 20, 1998.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; r. and recr. (1), am. (3) (c) 1. and (4), Register, December, 1998, No. 516, eff. 1−1−99.

Comm 47.336 Feasibility testing. Feasibility testing is considered part of remedial action and cannot be included in an investigation claim filed on or after April 21, 1998, without prior department approval for inclusion of the costs. Additionally, feasibility testing costs may only be claimed when they are directly associated with a remedial action that is approved by the department for reimbursement.

Note: Sampling and laboratory testing of groundwater or soils for geochemical, nutrient and bacterial levels is not considered feasibility testing.

History: Cr. Register, December, 1998, No. 516, eff. 1−1−99.

Comm 47.337 Site investigation and remedial action. (1) GENERAL. Sites for which site investigations were not started as of January 15, 1993, and for which a remedial alternative has not been received by the department as of April 20, 1998, shall conform to this section. The scope of the site investigation shall include determining the presence of the environmental factors specified in sub. (3) (a).

(2) MAXIMUM ALLOWABLE COST. (a) The maximum allowable cost for a site investigation and the development of a remedial

action plan shall be no more than $40,000, excluding interest, feasibility testing, and interim action costs, unless approved under par. (b).

(b) If the investigation will exceed $40,000, the claimant or its agent shall contact the department in writing and provide an estimate of additional work and funding required and obtain the department's approval. If the additional approval is not obtained, costs above the $40,000 level will not be reimbursed.

(c) The consultant is responsible for monitoring the costs incurred in the investigation and remedial action plan development and identifying that the $40,000 maximum may be exceeded. The consultant shall notify the claimant, in writing, at the earliest point at which the consultant may know, or may have been reasonably expected to know, that the maximum allowable cost may be exceeded and that the approval of the department shall be obtained before any costs above $40,000 will be reimbursed by the department. The notification to the owner shall be made before the owner has incurred liabilities above the $40,000 maximum.

(d) If interim actions are performed during the course of an investigation or prior to the approval of a remedial action plan, costs above $5000, excluding interest, shall not be reimbursed. The department shall be informed prior to the implementation of any interim action.

(3) ENVIRONMENTAL FACTORS. (a) *Environmental factors.* Consultants shall determine the presence of any of the following environmental factors:

1. Documented expansion of plume margin.

2. Verified contaminant concentrations in a private or public potable well that exceeds the preventive action limit established under ch. 160, Stats.

3. Contamination within bedrock or within 1 meter of bedrock.

4. Petroleum product that is not in the dissolved phase is present with a thickness of .01 feet or more, and verified by more than one sampling event.

5. Documented contamination discharges to a surface water or wetland.

(b) *Presence of environmental factors.* Consultants for sites that exhibit one or more environmental factors shall complete an analysis of remedial alternatives and prepare a remedial action plan. The analysis shall identify the lowest cost remedial strategy that will address the environmental factor and the remediation of the site. Included within the action plan shall be a cost detail providing separate dollar amounts for consulting and commodity activities. The cost detail shall provide the total cost, excluding interest but including all closure costs, for the remediation up to approval as a closed remedial action. The remedial action plan, cost detail, information on any interim actions conducted during the site investigation, and a separate report providing the information detailed in s. NR 716.15, and including an estimate of total contaminant mass, shall be submitted to the department and approval of the cost detail received before conducting any remedial action for which reimbursement will be claimed under the PECFA fund.

(c) *Absence of environmental factor.* If no environmental factors are identified during or after a site investigation, the consultant will develop an analysis of remedial alternatives and prepare a remedial action plan utilizing a non−active treatment approach. The analysis shall identify the lowest cost remedial strategy that will address the remediation of the site. Included within the analysis shall be a cost detail providing separate dollar amounts for consulting and commodity activities. The cost detail shall provide the total cost, excluding interest but including all closure costs, for the remediation up to approval as a closed remedial action. The remedial action plan, cost detail, and a separate report providing the information detailed in s. NR 716.15, and including an estimate of total contaminant mass, shall be submitted to the department and approval of the cost detail received before conducting any remedial action for which reimbursement will be claimed under the PECFA fund. The alternative proposed may include only the use of the following:

1. Non−active source control, which may include soil excavation.

2. Development and remediation to site specific residual contamination levels.

3. Monitoring to evaluate the potential for remediation by natural attenuation.

4. Remediation by natural attenuation.

5. Monitoring.

6. Institutional controls and site restrictions.

7. Other non−active remedial approaches.

(d) *Additional controls.* Any alternative proposed to the department shall identify whether it assumes or includes the use of any institutional controls, groundwater use restrictions, deed notices or other restrictions or notifications.

(4) REMEDIAL ACTION PLAN APPROVAL DECISIONS. (a) *Department options.* After the review of a submitted remedial action plan, the department may elect to do any or a combination of the following:

1. Approve the plan with cost caps.

2. Require the submittal of an additional specific remedial action plan for the purpose of determining whether there is a lower cost option to achieve a closed remedial action status.

3. Bundle the site with another remediation in order to reduce costs while still achieving a status of a closed remedial action.

4. Direct the site to a public bid process to establish a lower maximum reimbursable amount to achieve a closed remedial action.

(b) *Criteria for department decisions.* In determining the course of action to take on a remedial action plan, the department's consideration may include the following points:

1. Whether the plan will achieve a closed remedial action status for $80,000 or less in total remedial action costs, including consultant plus commodity costs but excluding interest.

2. Whether a combination with another remedial action or site would possibly accomplish a net reduction in the cost to achieve a closed remedial action.

3. If costs included in remedial action plan reflect reasonable costs in terms of dollars per pound of contaminant reduction.

4. Whether a bidding process might accomplish a reduction in the cost to achieve a specific closed remedial action status or identify new alternatives for the site that would reduce total costs.

5. Whether bidding or bundling is able to accomplish a reduction in the cost per pound of contaminant reduction.

6. Whether the remedial action plan under consideration presents an alternative that is reasonably expected to result in the appropriate agency approval for a closed remedial action.

(5) CLAIMANT NOTICE. As a means of verifying that the claimant is aware of the remedial action plan which has been submitted to the department, the department may require the submittal of an owner−signed statement verifying knowledge of the remedial action plan proposed.

(6) CLAIMANT OPTIONS. (a) After receiving an approval of a remedial action plan from the department, a claimant may elect to either implement the alternative or to select another alternative. If the claimant elects to implement a higher cost remedial strategy, the claimant shall notify the department in writing of the intent to use a higher cost alternative. The notification shall include the statement that the claimant agrees that the department approved alternative establishes the maximum reimbursable amount for consulting and commodity services under the fund and that additional costs for the occurrence, excluding interest, will not be submitted to the fund.

(b) The department may elect to approve reimbursement for a higher cost remedial strategy if it furthers the objectives of the program.

History: Cr. Register, December, 1998, No. 516, eff. 1−1−99.

Comm 47.338 Review of existing sites. (1) GENERAL. The department may review the remedial performance and costs associated with any existing sites. As part of the review, the department may elect to do any or all of the following:

(a) Deny any or all funding, after July 1, 1998, if a claimant failed to carry out site recommendations developed by the DNR in its "PECFA Efficiency Project."

Note: "PECFA Efficiency Project" refers to a study conducted by the DNR.

(b) Deny any or all funding if a claimant fails to provide information required by the department as part of a review of existing sites.

(2) EXISTING SITE CAPS OR ESTIMATES. The department may require a redetermination of costs for any existing site to establish a total cost, excluding interest but including all closure costs, to achieve the status of a closed remedial action. After reviewing the total cost, the department may do any or a combination of the following: approve and establish a cap on total costs, excluding interest; deny approval of costs; approve system enhancements; bundle the site with another remediation(s); or direct the site through a public bid process to establish a lower site cost. A claimant may elect either to implement the alternative or to select another alternative. If the claimant elects to implement a higher cost remedial strategy, the claimant shall notify the department in writing of the intent to use a higher cost alternative. The notification shall include the statement that the claimant agrees that the department−approved alternative establishes the maximum reimbursable amount for consulting and commodity services under the fund and that additional costs for the occurrence, excluding interest, will not be submitted to the fund.

History: Cr. Register, December, 1998, No. 516, eff. 1−1−99.

Comm 47.339 Cost effective remediations. (1) FLEXIBILITY. If a claimant can achieve a closed remedial action, and the total costs incurred are equal to or less than $80,000, excluding interest, the department will allow the claimant to complete their remedial efforts without the requirements to:

(a) Develop and submit investigation and other interim environmental reports, if the site closure decision falls under the department's authority.

(b) Develop and submit a remedial action plan and be potentially subject to caps, bundling and public bidding.

(c) Adhere to the $40,000 cap on investigation costs.

(2) NOTIFICATION AND REQUIREMENTS. If a claimant and his or her consultant elects to attempt to achieve a closed remedial action within the $80,000 limit, the department shall be notified in advance of implementation of the remediation process of the intended attempt. If the effort is not successful, the department shall be notified as soon as it is known or should have reasonably been expected to be known that the site will not be completed within the $80,000 limit. The $80,000 limit shall not be exceeded without prior notice to and approval from the department. After notification of the failure to accomplish a closed remedial action, the department will provide direction on whether additional action will be funded, or whether a remedial action plan is to be prepared and submitted. If any expenses above the $80,000 limit are incurred, excluding interest, without department approval, they will be the sole responsibility of the consultant and cannot be claimed for reimbursement under the PECFA fund.

(3) DISQUALIFICATION. If a consulting firm or consultant, in the opinion of the department, exhibits a pattern of attempting and failing to complete remediations under this section, the department will notify the consultant or the firm of the general restriction from attempting the remediations. The department may also disqualify the consultant from performing all work under PECFA.

History: Cr. Register, December, 1998, No. 516, eff. 1−1−99.

Comm 47.34 Deductibles for underground and aboveground tanks. All awards made under the scope of this chapter shall be subject to a deductible per occurrence.

(1) UNDERGROUND TANKS. (a) For a claim filed after July 31, 1987 for costs incurred after July 31, 1987 and before August 15, 1991, the department shall issue an award less a deductible amount of $5,000 per occurrence.

(b) For a claim filed after July 31, 1987 for costs incurred on or after August 15, 1991, but before July 1, 1995, the department shall issue an award less a deductible amount of $2,500 plus 5% of the eligible costs, but not more than $7,500 per occurrence.

(c) For a claim filed after July 31, 1987 for costs incurred after July 1, 1995, the department shall issue an award less a deductible amount of $10,000 per occurrence.

(2) ABOVEGROUND TANKS. (a) For a claim filed after July 31, 1987 for costs incurred after July 31, 1987 and before August 15, 1991, the department shall issue an award less a deductible amount of $5,000 per occurrence.

(b) For a claim filed after July 31, 1987 for costs incurred on or after August 15, 1991, and on or before July 1, 1993, the department shall issue an award less a deductible amount of $2,500 plus 5% of the eligible costs, but not more than $7,500 per occurrence.

(c) For a claim filed after July 31, 1987 for costs incurred after July 1, 1993, the department shall issue an award less a deductible amount of $10,000 per occurrence.

(3) OTHER TANKS. For a claim filed for a home oil tank system remediation, within the scope of this chapter, no deductible amount shall be charged. Only 75% of the amount of eligible costs but no more than $7,500 shall be reimbursed.

(4) REBATE OR REIMBURSEMENT OF DEDUCTIBLE. No service provider, consultant or subcontractor shall reimburse the responsible party for the deductible amount established by the department.

Note: Section 101.143 (4) (ee), Stats., provides that the department may waive the deductible amount if the department determines that the responsible party is unable to pay the deductible amount or is indigent as determined by the department.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94.

Comm 47.35 Award payments for claims received by the department before April 21, 1998. (1) GENERAL. Awards shall be made if funds are available at the time of completion of a claim review.

(2) SEQUENCING PAYMENTS. (a) *Awards.* Except for those cases as specified in sub. (3) (a) and (b), claims shall be paid on a strict first−in first−out basis with the claim date being established when necessary approvals and the complete claim package have been received by the department.

1. Progress payments may be made to entities that have not met or do not have the ability to meet the test for self−insurance included in s. Comm 10.82. All requests for progress payments shall be accompanied by a completed Remedial Fund Application form (ERS−8067). The department may conduct field or financial audits or inspections to verify completion of each phase of remediation prior to payment.

Note: Copies of the department forms required in this code are available from the department at the address shown in the Appendix.

2. Progress payments may be made only at the following times:

a. Completion of an emergency action;

b. Completion of a site investigation and remedial action plan;

c. Completion of remedial action activities; and

d. Annually for maintenance, monitoring and operation costs.

(b) *Other interim payments.* In addition to the progress payments identified in par. (a) 2., the department shall also make awards at the following points:

1. When $100,000 of unreimbursed costs have been incurred for a site; or

2. If the department fails to approve reimbursement above the $40,000 cap for the completion of a site investigation and remedial action plan development, and the lender terminates their funding relationship with the responsible party and requests reimbursement.

(3) PRIORITY PROCESSING. (a) *Emergency actions.* The department may, after determining that an emergency exists, make an award in advance of claims received prior to the emergency claim. The finding of an emergency shall be made based upon an immediate need to protect public health and safety. The finding of an emergency may not be based on financial hardship or indigence of the responsible party or agent. The department shall be the sole determiner of whether an emergency exists and an appeal of the decision to the department is not allowed.

(b) *Cost−effective remediations.* If a responsible party is able to complete a remediation, at least up to the point of long−term monitoring or where passive bio−remediation is approved by the DNR, and the total costs incurred are equal to or less than $50,000, the claim may receive priority processing. Claims received under this paragraph may be processed and awards made before other complete claims, except for emergency claims under par. (a).

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; am. (1), (2) (a) (intro.) and (b) (intro.), r. (2) (a) 1., renum. (2) (a) 2. and 3. to be (2) (a) 1. and 2. and am. 1., Register, December, 1998, No. 516, eff. 1−1−99.

Comm 47.355 Award payments for claims received by the department on or after April 21, 1998. (1) GENERAL. Awards shall be made if funds are available at the time of completion of a claim review.

(2) SEQUENCING PAYMENTS. (a) Except for those cases specified in sub. (3) (a) and (b), claims shall be paid on a strict first−in−first−out basis with the claim date being established when any required state agency approval and the complete claim package have been received by the department.

(b) *Closure.* Payments shall be made for closed remedial actions.

(c) *Progress payments.* Progress payments may not be made to entities who have met or have the ability to meet the test of self−insurance in s. Comm 10.82. All requests for progress payments shall be accompanied by a completed Remedial Action Fund Application form (ERS−8067). The department may conduct field or financial audits or inspections to verify completion of each phase of remediation prior to payment. Progress payments may be made only at the following times:

1. Completion of an emergency action.

2. After completion of an investigation, submittal of the remedial action plan and receipt of written approval by the department to submit the investigation claim.

3. Approval of a closed remedial action.

4. Approval of natural attenuation as a final remedial response or at the end of each two−year cycle of the monitoring necessary to show that remediation by natural attenuation will occur.

5. At the end of each two−year cycle of monitoring required for off−site contamination.

6. After implementation and 2 years of actual operation, or monitoring, or combination thereof, and every 2 years thereafter.

7. For financial hardship claimants: after completion of the site investigation, submittal of the remedial action plan and receipt of written approval by the department to submit the investigation claim; after implementation of an approved remedial action; or annually after completion of each year of operation and maintenance or monitoring.

8. For sites selected by the department for progress payments based upon extreme life safety and environmental risk and where the claimant has demonstrated to the department's satisfaction that he or she does not have the financial means to conduct a remediation without progress payments; after completion of the site investigation, submittal of the remedial action plan and receipt of written approval by the department to submit the investigation claim; after implementation of an approved remedial action; or annually after completion of each year of operation and maintenance or monitoring. The department shall be the sole determiner of whether progress payments are to be allowed, and an appeal of the decision to the department is not allowed.

Note: Claimants, who have met or have the ability to meet the test of self−insurance, may also file for a payment after implementation and two years of actual operation, sampling, and monitoring of an active treatment system and every two years thereafter.

(d) *Other interim payments.* The department shall also make awards at the following points:

1. When a lender terminates a funding relationship with a claimant and requests reimbursement for the funds expended. A completed Assignment of PECFA Reimbursement form (ERS−8523) shall be submitted to the department prior to payment and the check shall be jointly paid to the claimant and the lender.

2. When a claimant has incurred eligible expenses equal to the occurrence maximum plus the applicable deductible.

Note: Copies of the department forms required in the code are available from the department in the address shown in the Appendix.

(3) PRIORITY PROCESSING. (a) *Emergency actions.* The department may, after determining that an emergency exists, make an award in advance of claims received prior to the emergency claim. The finding of an emergency shall be made based upon an immediate need to protect public health and safety. The finding of an emergency may not be based on financial hardship or indigence of the responsible party or agent. The department shall be the sole determiner of whether an emergency exists, and an appeal of the decision to the department is not allowed.

(b) *Cost−effective remediations.* If a claimant can achieve a closed remedial action, and the total costs incurred are equal to or less than $80,000, excluding interest, the claim may receive priority processing. Claims received under this paragraph may be processed and awards made before other complete claims, except for emergency claims under par. (a).

History: Cr. Register, December, 1998, No. 516, eff. 1−1−99.

Comm 47.36 Third−party claims. (1) GENERAL. A responsible party may file a claim with the department for the reimbursement of an amount paid to third parties for personal injury to another individual or off−site property damage associated with a petroleum product discharge from an underground petroleum product storage tank system within the scope of this chapter. The existence of these claims shall be made known to the department, by the responsible party shall notify the department of these claims, no later than 30 calendar days from the date that they knew or could have reasonably have been expected to have known of the occurrence of the injury or personal property loss. Rules established by the office of the commissioner of insurance, as specified in s. Ins 6.35, concerning ineligible costs for third−party claims shall apply.

(2) THIRD−PARTY COMPENSATION FOR UNDERGROUND STORAGE TANKS. Costs incurred from environmental pollution and remediation actions, including compensation to third parties for property damage and individual bodily injury, may be deemed eligible costs as specified in s. Comm 47.30 (1).

Note: Liabilities which are excluded from coverage in liability insurance policies for bodily injury and liabilities which are excluded in liability insurance policies for property damage, for the purpose of this chapter, are defined by the state of Wisconsin commissioner of insurance, as specified in s. Ins 6.35, as required in s. 101.143 (1m), Stats.

Note: If a person conducts a remedial action activity for a discharge from a petroleum product storage tank system or home oil tank system, whether or not the person files a claim under this chapter, the claim and remedial action activity conducted are not evidence of liability or an admission of liability for any potential or actual environmental pollution, as specified in s. 101.143 (7) (b), Stats.

(3) INTERVENTION IN THIRD−PARTY CLAIMS. The owner or operator of an underground petroleum product storage system eligible for an award under the scope of this chapter, shall notify the department in writing of any action by a third party against the owner or operator for compensation. The department may intervene in any third−party actions against an owner or operator of an underground petroleum product storage tank system for compensation for bodily injury or property damage. The department of justice may assist the department in this intervention.

(4) THIRD−PARTY COMPENSATION FOR ABOVEGROUND STORAGE TANK SYSTEMS. Third−party damages are not a reimbursable expense if the damage is the result of a discharge from an aboveground petroleum product storage system.

(5) REASONABLE JUDGMENT DETERMINATION. (a) Third−party personal injury. The department may establish a peer review adjudicator panel to review third−party personal injury reimbursement claims resulting from a discharge from an underground petroleum product system under the scope of this chapter. The review panel shall make a monetary determination for reimbursement based upon reasonable health care service costs and other computation methods established by the department.

(b) Peer review adjudicator panel. The panel may make a recommendation to the department for an award from the fund to compensate the third party for personal injury or property damage. The department shall review the recommendation and make a decision regarding an award amount under the program.

(c) Third−party property claims. For third−party claims associated with the removal of property items such as, but not limited to, blacktop and cement, the depreciated value of the property may be reimbursed. The basis of the value of the property shall be included in the claim. Full replacement costs may not be reimbursed by the fund.

(6) ELIGIBLE COSTS. (a) A responsible party may include the reimbursement for personal injury or property damage costs on a claim for an award within the scope of this chapter. Reimbursement of a claim shall be based upon a showing that the cost was caused by the petroleum product discharge and that the amount claimed is reasonable.

(b) If third−party claims exceed the maximum allowed under this chapter for the applicable type of underground petroleum product storage tank system, costs shall be reimbursed in the following order:

1. Eligible costs of on−site and off−site remediation and replacement of drinking water wells;

2. Eligible costs for personal injury; and

3. Eligible costs for property damage.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94.

Comm 47.37 Disposal of remedial equipment and materials purchased through PECFA. (1) GENERAL. If materials or an equipment item, which was purchased and reimbursed for through the PECFA fund, is no longer required at the site, the item or material shall be sold and the funds returned to the PECFA fund for deposit to the segregated account for the payment of claims.

(2) SALE OF REMEDIAL EQUIPMENT OR MATERIALS. The sale of remedial equipment or materials no longer required shall be accomplished as follows:

(a) The claimant shall obtain the best available bid for the equipment item or materials;

(b) The claimant shall submit the bid price obtained and the original purchase price of the item to the PECFA program for authorization to sell; and

(c) The department may, after review of the bid, determine that the sale may be completed. A check payable to the department, indicating that it is from the sale of remedial equipment or materials, shall be provided to the department for deposit to the segregated account.

(d) If the bid price is not at fair market value or for any other reason not acceptable to the department, the department may at its discretion take possession of the equipment or materials for disposal through government surplus sale.

(e) The department, at its discretion, may publish a listing of remedial equipment or materials available for use at remediation sites. The department may require the use of this equipment or materials rather than the purchase of new materials and equipment for a remediation.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94.

Subchapter V — Consultants, Consulting Firms, Laboratories and Drilling Firms

Comm 47.40 Admission to participation. (1) GENERAL. (a) All consultants and consulting firms shall be required to register with the department for admission to participate in the PECFA program. Consultants conducting work under this chapter may normally be defined as, but not limited to, principal engineers, project engineers, hydrogeologists, and environmental scientists or specialists. Eligibility for admission shall be based upon receipt and approval of the application.

(b) Remedial consulting services and activities performed by individuals and firms, who have not registered to participate in the PECFA program may not be reimbursed under the scope of this chapter unless the department determines that denying reimbursement would conflict with the achievement of the goals of the PECFA program.

Note: Admission to participate initially included an interim provision which required all consulting firms and consultants to meet all criteria as specified in sub. (1) as of February 28, 1993.

(2) CONSULTANTS. (a) *General.* Consultants shall meet all applicable consultant qualifications that may be established by the DNR and shall be registered to participate in the PECFA program by application to the department. All consultants shall also meet and demonstrate compliance with the following criteria:

1. Provide a signed statement to the department verifying agreement to abide by the provisions of the statutes and administrative laws under the PECFA program;

2. Certify knowledge of the PECFA program and this chapter.

(b) Ineligibility. Consultants not meeting the criteria as specified in par. (a) shall no longer be eligible to participate in the PECFA program.

(3) CONSULTING FIRMS. (a) *General.* Companies or other organizations that provide environmental or remedial consulting services under the scope of this chapter shall register to participate in the PECFA program by application to the department.

(b) *Documentation.* In order to be registered to participate, consulting firms shall meet and demonstrate compliance with the following criteria:

1. Provide a signed statement to the department verifying agreement to abide by the statutes and administrative rules under the PECFA program and to include a signed statement with each claim that all costs claimed by the consulting firm are a true and accurate account of services performed;

2. Provide a signed statement that the firm shall make available for inspection and audit records requested by the department for field or financial audits under the scope of this chapter;

3. Certify knowledge of the PECFA program and this chapter; and

4. Certify that they will comply with all OSHA training and safety requirements related to remedial activities and services performed under the scope of this chapter even if the firm is not

required to have OSHA trained staff for other projects or professional activities.

Note: Initially all consultants and consulting firms were required to meet the criteria outlined in par. (b) by February 28, 1993.

(c) *Insurance.* 1. All consulting firms shall obtain and maintain errors and omissions (professional liability) coverage, including pollution impairment liability, of no less than $1,000,000 per claim, $1,000,000 annual aggregate and with a deductible of no more than $100,000 per claim.

2. A certificate or certificates verifying the existence of the required insurance coverage for all environmental consultants who performed work included in a claim, shall be submitted with the PECFA claim.

3. The insurance coverage shall be provided by a firm that has an A.M. Best rating of at least "A−".

4. A consulting firm may request the department's approval of an alternate mechanism for meeting the requirement of the maximum deductible of $100,000 per claim. The department shall review the request and determine whether it meets the requirement of the rule.

Note: Initially all consulting firms were required to meet the insurance provisions as specified in par. (c) by June 1, 1993.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94.

Comm 47.405 Application for admission to participate. (1) Application by a consultant or consulting firm for admission to participate shall be made in writing and include the name of the person or contact person, a complete name and mailing address, telephone and fax numbers, the federal tax identification number or social security number, and all items included in s. Comm 47.40 (2) or (3), whichever is applicable. Consultants and consulting firms shall inform the department in writing within 30 business days of any change in the information previously provided to the department.

(2) Application for admission shall be submitted to the department on forms provided by the department. Notification of changes in consultant or firm status shall be provided to the department.

Note: Copies of the department forms required in this code are available from the department at the address shown in the Appendix.

(3) Failure to comply with s. Comm 47.40 shall immediately disqualify a consultant or consulting firm participation in the PECFA program. The department shall not reimburse for services performed by consultants or consulting firms that are not registered to participate unless the department determines that reimbursement would further the goals of the program.

(4) Upon receipt of the completed application form, the department shall review and evaluate the application and make all necessary notifications to the applicant within 30 days of the receipt of the application.

(5) If the department determines that the applicant does not qualify for admission to participate, the applicant shall be notified of the findings in writing and instructed on the appeals procedure provided under s. Comm 47.53.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; r. and recr. (2), Register, December, 1998, No. 516, eff. 1−1−99.

Comm 47.406 Issuance of certificate of admission. Upon verifying the completion of the requirements for admission, the department shall notify the applicant in writing and shall issue the appropriate certificate. The certificate shall bear the name of the applicant, certification number and certification category of individual consultant or consulting firm. The department may periodically require submittal of proof that individuals or firms continue to comply with the conditions in s. Comm 47.40 (2) or (3), whichever is applicable. The department shall issue the certificate within 30 business days of full completion of the requirements for admission by the applicant.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94.

Comm 47.41 Method of disqualification. (1) GENERAL. The department may disqualify a consultant or consulting firm from admission to participate or make claims under the PECFA program, if the department has investigated and determined that the consultant or consulting firm has failed to comply with this chapter. Defrauding the PECFA program shall be considered a criminal offense, as specified in s. 101.143 (3) (g), Stats.

(a) Disqualification. The notice of disqualification shall be made by certified mail sent to the address filed with the application. Service shall be verified by the certified mail receipt. The following types of conduct may constitute the basis for disqualification from participation in the PECFA program:

1. Intentional cost shifting;

2. Intentional billing for activities not undertaken at a specific cleanup site, rebating of the deductible or structuring of a claim to provide a responsible party with a rebate or reimbursement of the deductible;

3. Intentionally submitting fraudulent invoices or bills, or fraudulent or incomplete claims;

4. Conducting unnecessary, ineffective or incomplete remedial activities or services;

5. Attempts to defraud, including but not limited to false or double billing clients for work conducted;

6. Violations of the administrative rules of the department;

7. Violation of the state of Wisconsin Statutes;

8. Failure to obtain or maintain criteria for participation as established in s. Comm 47.40 (2) or (3), whichever is applicable;

9. Charging of a fee that the department has determined to be excessive, after written notice from the department that the fee is excessive and should not be charged; and

10. Denial of access to requested records.

(b) Reinstatement to participation. A consultant or consulting firm no longer registered to participate may be reinstated after a specified period dependent upon the number of occurrences of prior disqualification as specified in par. (a). The following periods of disqualification may be used to determine reinstatement to participate in the PECFA program:

1. A first period of disqualification, shall be no less than 3 months;

2. A second or subsequent period of disqualification, shall be no less than 6 months but may be for an indefinite period depending on the severity of the violation; and

3. Criminal or fraudulent actions, within the scope of the PECFA program, shall result in permanent disqualification.

(c) Hearings and appeals of decisions regarding disqualification. When the department determines that a consultant or consulting firm is no longer registered to participate, the affected party may appeal as specified in s. Comm 47.53. The right to hearing shall be considered waived if the applicant fails to submit the request within 30 calendar days of receipt of the determination. The department shall conduct a hearing and record the proceedings. The department shall conduct a hearing and make a determination within 30 business days of the hearing regarding disqualification to participate.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94.

Comm 47.415 Laboratories and drilling firms. (1) INSURANCE. (a) As of March 1, 1994, all laboratories performing work under the PECFA program shall obtain and maintain errors and omissions (professional liability) coverage of no less than $1,000,000 per claim, $1,000,000 annual aggregate and a deductible of no more than $100,000 per claim.

(b) As of March 1, 1994, all drilling firms performing work under the PECFA program shall obtain and maintain general liability coverage, including pollution impairment liability, of no less than $1,000,000 per claim, $1,000,000 annual aggregate and a deductible of no more than $100,000 per claim.

(2) COVERAGE. The insurance obtained by laboratory and drilling firms shall cover work performed under PECFA on or after March 1, 1994. For all laboratory and drilling firms included in a claim, a certificate or certificates verifying the existence of the insurance coverage as specified in sub. (1), shall be submitted with the PECFA claim.

(3) RATING. The insurance coverage shall be provided by a firm that has an A.M. Best rating of at least "A−".

(4) ALTERNATE MECHANISMS. A laboratory or drilling firm may request the department's approval of an alternate mechanism for meeting the requirement of the maximum deductible of $100,000 per claim. The department shall review the request and determine whether the mechanism meets the requirement of the rule.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94.

Comm 47.42 Field and financial audits. (1) GENERAL. The department shall routinely investigate remediation sites to establish that the remediation is appropriate and that costs incurred reflect the remediation services and activities.

(2) APPLICABILITY. The department may conduct field and financial audits as deemed necessary in order to further the goals of the PECFA program. Activities which may warrant the conduct of a field or financial audit may include, but not be limited to, the following:

(a) Complaints;

(b) High cost sites;

(c) Cases where retrofits are being undertaken;

(d) New construction activities;

(e) Receipt of additional information which may result in modifying the initial determination of eligibility;

(f) More than one occurrence on a specific site; and

(g) Sites having intermingled plumes.

(3) MAINTENANCE OF AND ACCESS TO RECORDS. (a) General. All consultants and consulting firms registered to participate, all organizations and individuals, including but not limited to service providers and others who perform remedial action services, all owners, operators, and persons owning home oil tank systems who file or attempt to file a claim under the PECFA program shall maintain records relevant to a claim for 6 years after claim submittal and make available for inspection, upon request of the department, all financial and work records deemed by the department as necessary to support or investigate a claim or attempted claim.

(b) Failure to maintain records and denial of access. Failure to maintain and denial of access to records, as specified in par. (a), requested by the department shall constitute grounds for denial of participation in the PECFA program and penalties as specified in par. (c) may apply.

(c) Penalties. Penalties shall be established for violations to this section, as per s. 101.143 (10), Stats.

1. Any owner or operator or person owning a home oil tank system or service provider who fails to maintain a record as specified under this chapter, may be required to forfeit not more than $2,000. Each day of continued violation constitutes a separate offense.

2. Any owner or operator or person owning a home oil tank system or service provider who intentionally destroys a document that is relevant to a claim for reimbursement under the fund, may be fined not more than $1,000 or imprisoned for not more than 10 years or both.

(d) Notification of work performed. The department may, at its request, require consultants and consulting firms registered to participation and all organizations and individuals who perform remedial action services and all owners, operators and persons owning home oil tank systems to notify the department no less than 10 calendar days in advance of any work being performed at a site or sites.

(e) Parallel sampling requirement. At the request of the department, consultants or firms registered to participate or organizations or individuals who perform remedial action services shall, as directed by the department, take soil or groundwater samples and submit these samples to a laboratory specified by the department. The cost of preparing and submitting these samples shall be an eligible cost to the PECFA program independent of any cost cap or cost estimate. The laboratory reports, for requested samples, shall be sent to the department directly from the specified laboratory. The cost of the laboratory analysis shall be paid by the owner and submitted as part of the PECFA claim.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94.

Subchapter VI — Legal Issues

Comm 47.50 Noticing the department of actions. (1) PROPERTY TRANSFER. The owner or operator or person owning a home oil tank system shall have the responsibility of notifying the department of a property transfer which occurs during a remediation.

(2) SALE AGREEMENT. The sale agreement for a property being transferred during a remediation or prior to the completion of a remediation shall contain language defining the party responsible for the completion of the remediation, responsible for the payment of costs incurred and the recipient of the PECFA award.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; correction made under s. 13.93 (2m) (b) 1., Stats., Register, December, 1998, No. 516.

Comm 47.51 Petroleum storage environmental cleanup council. (1) COUNCIL. As per s. 15.157 (11), Stats., the petroleum storage environmental cleanup council is created in the department.

(2) FREQUENCY OF MEETINGS. The council shall meet at least annually and at the call of the chair, a majority of its members or at the request of the department.

(3) REIMBURSEMENT. Each member shall be reimbursed for actual and necessary travel and meal expenses incurred in the performance of their duties in accordance with current state travel and expense guidelines.

(4) RESPONSIBILITIES. The council shall have the following responsibilities:

(a) Advise the department on any rules promulgated to implement s. 101.143, Stats.;

(b) Review and advise the secretary of the department and the secretary of the DNR on the implementation of the petroleum storage remedial action program established in this chapter;

(c) Review estimates of funds and fees needed to sustain the petroleum storage remedial action program; and

(d) Consult on processes and procedures for awarding claims under this chapter.

(5) QUORUM. A majority of members of the council shall constitute a quorum to conduct business and take actions.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94; correction in (1) made under s. 13.93 (2m) (b) 7., Stats.

Comm 47.52 Dispute resolution procedures. (1) Individuals, including owners, operators, persons owning home oil tank systems and their agents may submit a written complaint to the department regarding a consultant or consulting firm alleged to be involved in any violation of the law or this chapter.

(2) The department may investigate alleged violations on its own initiative or upon the receipt of a complaint. The department may conduct an investigation and make a determination regarding a complaint within 30 business days of the receipt of the complaint. The department shall take appropriate action based on its determination. If it is determined that no further action is warranted, the department shall notify the persons affected.

Note: Section 101.09 (5), Stats., states "(5) *Penalties. Any person who violates this section or any rule or order adopted under this section shall forfeit not less than $10 nor more than $1,000 for each violation. Each violation of this section or any rule or order under this section constitutes a separate offense and each day of continued violation is a separate offense.*"

Note: Each remedial activity, cost item fraudulently claimed, or other activities conducted or information submitted in violation of any section of this chapter shall be considered a separate violation.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94.

Comm 47.53 Appeals and hearings. (1) HEARINGS. (a) *General.* A responsible party, agent, consultant or consulting firm may request a hearing with the department, as specified in s. 101.02 (6) (e), Stats., on any provision or decision made within the scope of this chapter except as specified in ss. Comm 47.03, 47.35 (3), 47.355 (2) (c) 8. and (3) (a) and par. (b) 2.

(b) *Appeal requirements.* All appeals pursuant to this chapter shall be filed no later than 30 calendar days from the date of the decision being appealed. The department may make a determination not to proceed with a request for a hearing depending on the nature of or amount of the cost item being appealed.

1. Costs of consultants or individuals preparing and participating in appeals shall not be eligible for reimbursement under the PECFA program.

2. Appeals of items identified as ineligible, as listed in s. Comm 47.30 (2), shall not be allowed.

(c) *Response.* Upon receipt of notification of hearing from the department, the affected party may submit to the department a written response within 30 calendar days of the date of service. Failure to respond within the prescribed time limit, or failure to appear at the scheduled hearing, may result in the allegations specified in the complaint being accepted as true and accurate.

(d) *Conciliation agreement prior to hearing.* If the department and the affected party are able to reach agreement on disposition of a complaint prior to a hearing, such agreement shall:

1. Be transmitted in writing to the secretary of the department;

2. Not be binding upon any party until accepted by the secretary of the department; and

3. Not be considered a waiver of any defense nor an admission of any fact until accepted by the secretary of the department.

(e) *Witness fees.* Witness fees and mileage of witnesses subpoenaed on behalf of the department shall be paid at the rate prescribed for witnesses in circuit court.

(2) CONDUCT OF HEARINGS. All hearings will be conducted by persons selected by the department. Persons so designated may administer oaths or affirmations and may grant continuances and adjournments for cause shown. The affected party shall appear in person and may be represented by legal counsel. Witnesses may be examined by persons designated by the department.

(3) DETERMINATIONS. The department may make determinations and enter its order on the basis of the facts revealed by its investigation. Any determinations as a result of petition or hearing shall be in writing and shall be binding unless appealed to the secretary of the department.

(4) APPEAL ARGUMENTS. Appeal arguments shall be submitted to the department in writing unless otherwise ordered.

(5) REIMBURSEMENTS. An award or portions of an award under the scope of this chapter may be withheld until a decision or an appeal shall be finalized.

History: Cr. Register, February, 1994, No. 458, eff. 3−1−94.